

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

VICTOR H. ALVARADO BALDERRAMO,
individually and in behalf of all other persons
similarly situated,

Plaintiff,

—against—

15 CV 2181 (ER)

TAXI TOURS INC. d/b/a BIG TAXI TOURS,
MICHAEL ALTMAN, and HERNANDO
CASTRO, jointly and severally,

Defendants.

AFFIRMATION IN OPPOSITION TO MOTION TO DISMISS

I, John M. Gurrieri, an attorney admitted to practice in this court, affirm under penalty of perjury under the laws of the United States of America that the following statements are true under the penalties of perjury:

1. I am associated with the Law Office of Justin A. Zeller, P.C., the attorneys for the plaintiff in this action and, as such, am familiar with the facts and circumstances of this action.
2. The plaintiff has prosecuted this claim, has missed no deadlines, and has not failed to comply with any court orders.
3. The plaintiff filed a complaint against Taxi Tours Inc. and Christopher Preston on March 23, 2015.
4. The plaintiff requested the issuance of summons to these defendants the same day, and the Court issued summonses on March 24, 2015, to Taxi Tours Inc. and Christopher Preston.

5. On April 21, 2015, the plaintiff sent Taxi Tours Inc. and Christopher Preston Notices of Lawsuit and Requests to Waive Service of Summons pursuant to Rule 4 of the Federal Rules of Civil Procedure. No waiver was timely returned.

6. On May 27, 2015, an attorney from Taxi Tours Inc., Michael Purcell, reached out to the plaintiff and notified the plaintiff's counsel that the named defendant Christopher Preston was not involved with the defendant corporation Taxi Tours Inc. during the relevant time period. Mr. Purcell also provided the plaintiff with documentation to support his claim. Exhibit 1 to this affirmation is an email from Michael Purcell dated May 27, 2015.

7. On July 29, 2015, the plaintiff emailed Michael Purcell with the notices of lawsuit and waivers that were sent previously on April 21, 2015. Exhibit 2 to this affirmation is the email sent to Michael Purcell.

8. In response to the July 29, 2015, email, on August 12, 2015, Peter Jakab, local counsel to Taxi Tours Inc., emailed a plan to the plaintiff whereby they agreed to execute a waiver of service for the corporate defendant under certain conditions. Exhibit 3 to this affirmation is the August 12, 2015, email from Peter Jakab.

9. On October 19, 2015, the plaintiff emailed Michael Purcell following up about service of process and asking who the relevant individual owners of the corporate defendant were. Exhibit 4 to this affirmation is the October 19, 2015, email sent to Michael Purcell.

10. On October 19, 2015, Peter Jakab responded to the email following up on the plan for executing service. Exhibit 5 to this affirmation is the October 19, 2015, email from Peter Jakab.

11. The plaintiff and Peter Jakab then agreed to amend the complaint and remove Christopher Preston from the case. On November 13, 2015, Peter Jakab, at the plaintiff's bequest supplied the plaintiff with documentation indicating who the correct individual defendants were.

12. On December 18, 2015, the plaintiff and Peter Jakab also entered into a tolling agreement whereby any potential claims against Christopher Preston would be preserved during the pendency of this action.

13. On February 1, 2016, attorney Peter Jakab admitted service of the first amended complaint on behalf of the corporate defendant Taxi Tours Inc.

14. The plaintiff served Interrogatories and a First Request for Production of Documents or Electronically Stored Information on the defendants on November 29, 2017.

15. The plaintiff has responded to the moving defendant's red-lined notice of collective action, but the moving defendant is withholding consent to file the proposed notice to the Court until after disposition on this motion despite the fact that the parties are in agreement as to the substance of the proposed notice.



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